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1 these are the paragraphs which talk about the fact that  
2 they considered what downstream finished product prices  
3 would be in entering into an alleged CRT conspiracy.

4 So, for example, at the end of 144, there is  
5 this allegation defendants also considered the internal  
6 pricing of products containing CRT's and at the end of  
7 146, there's the allegation, the analysis often included  
8 consideration of downstream prices. No mention of PNA,  
9 no discussion of withdrawal, yet these are the primary  
10 paragraphs that they first cited for this.

11 Now, the second thing they rely upon is 103 --  
12 sorry, is 163 which is the allegation that PNA which  
13 they call PCNA, this is 163, was represented at those  
14 meetings and was a party to the agreements entered at  
15 them.

16 There is no -- nothing else to indicate how  
17 they were represented, who represented them, which  
18 meetings were they represented by. It's simply a bald  
19 conclusory allegation. And then it says to the extent  
20 PCNA -- that's PNA -- distributed CRT products to direct  
21 purchasers it played a significant role. That is  
22 conclusory. You know, what role did it play? It says  
23 defendants wish to ensure that the prices for such  
24 products paid by direct purchasers would not undercut  
25 the pricing agreements, but they don't allege what did

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1 PNA do. This is all conclusory language, and I would  
2 submit under no version of Twombly or Iqbal could that  
3 kind of allegation be sufficient.

4 That's it. That's really the entire direct  
5 purchaser complaint against PNA. There's nothing else,  
6 other than the fact that they're in there because any  
7 mention of a corporate family member gets everybody else  
8 in.

9 Now what do the indirect purchasers say about  
10 PNA? They have two substantive references to PNA in the  
11 entirety of their --

12 THE COURT: Hang on a minute.

13 MR. KESSLER: Okay.

14 THE COURT: Okay.

15 MR. KESSLER: First they cite paragraph 182.  
16 182 is a similar allegation to the one we read in the  
17 direct purchaser case, a conclusory assertion that  
18 Panasonic NA were represented at those meetings and were  
19 a party to the agreements entered at them. To the  
20 extent -- it's almost identical. To the extent  
21 Panasonic NA and Panasonic Consumer Electronics sold or  
22 distributed the CRT products to direct purchasers they  
23 played a significant role. That's the same allegations  
24 that's in the direct purchaser complaint, wholly  
25 conclusory, no factual assertions to back this up. Just

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1 throwing this -- and by the way, they make this same  
2 allegation about every defendant who is a U.S.  
3 subsidiary. This is just a boiler plate conclusory  
4 assertion repeated over and over again in the complaint.  
5 You see the same thing for Hitachi or the same thing  
6 for, you know, for an LG entity. Just saying, well, you  
7 were represented at the meetings and you played an  
8 important role. There is no facts to support those  
9 assertions, just what the Supreme Court has cautioned  
10 against. So that's the first one that they have.

11 The second one that they have is the claim that  
12 it was reported at the meeting, somehow that things were  
13 reported.

14 THE COURT: Where are you reading from now?  
15 What paragraph?

16 MR. KESSLER: I'm trying to find where they  
17 make that allegation. Actually, they say that in their  
18 brief. I don't know that I have -- I don't know that I  
19 have a specific factual reference for that.

20 The next thing they say that they allege in  
21 their brief that PNA manufactured and sold CRT's. Well,  
22 they don't allege that in their brief. What they allege  
23 in their brief --

24 THE COURT: In the brief?

25 MR. KESSLER: In their brief they allege that.

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1 They don't allege that in the complaint. In the  
2 complaint what they allege is paragraph 81, and if you  
3 look at paragraph 81, it's just this same allegation,  
4 the same one they make for all of them, which is that  
5 during the class period Panasonic NA manufactured,  
6 marketed, sold and/or distributed CRT products.

7 So you don't know whether they're alleging  
8 whether they manufactured or distributed. They couldn't  
9 possibly allege manufacture because they'd have no basis  
10 for that. So even though -- and this is the problem  
11 with their briefs. Their briefs say, oh, we allege they  
12 manufactured CRT's, but in fact they couldn't possibly  
13 do that, it would be a Rule 11 violation. So instead  
14 they allege this general allegation and/or. Okay? And  
15 they say CRT products, not CRT's. So, again, they don't  
16 allege anything to link PNA to a CRT product conspiracy.  
17 So again we don't see any basis to include them in this  
18 complaint.

19 I also note, your Honor, that in the indirect  
20 complaint they have dropped their claims against, in 82,  
21 Panasonic Consumer Electronics Company, which is not a  
22 separate entity, and also their Malaysian company in  
23 paragraph 83. So the indirects have dropped those  
24 entities as well. So they are not an issue in the case  
25 any longer. We have the same three entities in issue at

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1 both complaints.

2 That brings us to Panasonic Corporation. First  
3 of all, the allegations against Panasonic Corporation,  
4 Panasonic Corporation is the Japanese company that owns  
5 PNA in Japan. What they allege about Panasonic  
6 Corporation is they claim at paragraph 162 -- this would  
7 be first of the direct purchasers' complaint -- in 162  
8 they assert that, and I'll just find the specific  
9 reference, I'm sorry. Maybe in the wrong -- I'm not  
10 wrong -- I was looking at the indirect.

11 It says Panasonic directly or through  
12 Matsushita Malaysia, well, first of all, Panasonic is  
13 defined as every Panasonic entity. So they don't allege  
14 this about Panasonic Corp and the reason that's  
15 significant is that it just as easily could be MTPD. We  
16 don't know who the Panasonic entity is even that they're  
17 alleging here because they don't say Panasonic Corp.  
18 Their brief says, oh, that's Panasonic Corp, but the way  
19 they structured their complaint, it's just Panasonic,  
20 which they define to be everybody. So we don't know who  
21 is there.

22 And then it's completely conclusory. They go  
23 directly or through Matsushita Malaysia. So we don't  
24 know if they're alleging Matsushita Malaysia, who is a  
25 defunct entity who has been dropped from the complaint,

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1 participated or whether Panasonic Corporation  
2 participated or whether somebody else participated.  
3 They say several dozen meetings. They don't specify  
4 which ones. Okay. And then they have general  
5 conclusory allegations about these fixing prices  
6 without, of course, saying anything about U.S. prices,  
7 and the meetings took place apparently in Taiwan,  
8 Malaysia and China.

9 Again, these are completely insufficient to  
10 bring Panasonic Corporation into this case in terms of  
11 this.

12 Then, what they also cite, if you look at the  
13 indirect purchasers, the indirect purchasers cite  
14 paragraphs 146, 181 and 183. Well, if you look at 146,  
15 what you'll see is that they say the first level of  
16 these meetings was attended by high level company  
17 executives. Well, there's no specific reference to  
18 Panasonic or which executive attended, but they cited in  
19 as somehow showing that Panasonic was at these meetings.

20 There is nothing there. Then they get to 181  
21 and 183 and they go between at least 1996 and 2003,  
22 defendant Panasonic through Panasonic Corp in Malaysia  
23 participated in several glass meetings. No identity of  
24 which meetings, you don't know whether it was through  
25 Matsushita Malaysia or through Panasonic Corporation,

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1 and then after 2003 participated through its joint  
2 venture with Toshiba MTPD. These meetings were attended  
3 by high level sales managers. No names, no dates, no  
4 times, nothing linking to the U.S., nothing linking to  
5 finished products in terms of that.

6 Again, this is just not the type of specificity  
7 that's there.

8 In summation, I'm going to stop, there has  
9 never been a case in which just saying that people, that  
10 companies attended meetings over a period of years  
11 without which meetings with no specificity as to what  
12 was said or done in these meetings has passed since  
13 Twombly has been involved and that includes LCD, okay.

14 LCD is a very different case with very, very  
15 different allegations, and, your Honor, we rest on the  
16 allegations in this case. They are simply not  
17 sufficient to link in these two companies. Thank you.

18 MR. MONTAGUE: Laddie Montague, your Honor.

19 First of all, there are cases where no  
20 participants have been named and no meetings have been  
21 specifically identified. Air cargo is one.

22 THE COURT: Well, he said after Twombly.

23 MR. MONTAGUE: But these are after Twombly.  
24 And In re Chocolate Confectionary case.

25 THE COURT: What's the name of the cases again,

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1 please?

2 MR. MONTAGUE: In re Air Cargo. I don't have  
3 the citation.

4 THE COURT: Is it in your brief?

5 MR. SPECKS: Your Honor, the decision reversing  
6 the magistrate's decision came out after the briefs.

7 THE COURT: Someone has to give me a cite.  
8 What's the second one?

9 MR. MONTAGUE: I think it's In re Chocolate  
10 Confectionary.

11 THE COURT: That cited somewhere in your  
12 briefing?

13 MR. LITWIN: I think it is.

14 MS. RUSSELL: I have it here.

15 MR. MONTAGUE: It's 2009 WestLaw 2486045,  
16 Middle District of Pennsylvania, August 11, 2009.

17 THE COURT: 2486045.

18 MR. MONTAGUE: 2486045, yes.

19 THE COURT: Okay. Thank you.

20 MR. MONTAGUE: These allegations are not  
21 inadequate because Mr. Kessler says so. I don't know of  
22 a case where anybody has been required to name the  
23 person from the company that attends a meeting or gives  
24 an exact date of a meeting. Look what we say about his  
25 client, and he refers to this in 162. We identify the



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1 company through which the meetings were attended,  
2 Matsushita Malaysia, and we mention several dozen  
3 bilateral and group meetings from '96 to 2003.

4 You know, that's not just an allegation of  
5 nothing. We spend about 15 paragraphs explaining what  
6 those meetings were, where they were located, what their  
7 purpose was. I mean, I've never seen a complaint that  
8 has this much in it, let alone that they're saying we  
9 don't have enough in it.

10 In addition, in paragraph 146 we allege that  
11 closing and restricting output was one of the matters  
12 that was discussed and agreed upon at the meetings, and  
13 then on page 40 of our complaint in the section entitled  
14 Effects of Defendants's Alleged Violations we have  
15 example of reductions in manufacturing capacity by  
16 defendants. This is reductions, we say, as a result of  
17 the conspiracy, and we list in paragraphs 182, 183,  
18 which is their joint venture MTPD, and 185, we refer to  
19 specific plant closings that were made restricting  
20 output. So we've been very specific as to Panasonic.

21 Lastly, with respect to the Panasonic of North  
22 America, they were a necessary chain in the family -- in  
23 the corporate family in order for the product to enter  
24 commerce. So, of course, they had to be part of the  
25 conspiracy and they were part of the family which we

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1 talk about in 154, and it's interesting, it's not in our  
2 complaint, but in our Footnote 64 of our brief, your  
3 Honor, on 105 we cite to their Web site that states (As  
4 read):

5 Panasonic Corporation of North America based  
6 in Secaucus, New Jersey, is the principal North  
7 American subsidiary of Osaka, Japan-based  
8 Panasonic Corporation on the New York Stock  
9 Exchange and the hub of its branding,  
10 marketing, sales, service, production,  
11 development and R&D operations in the U.S. and  
12 Canada.

13 So obviously it is a necessary link in this  
14 whole conspiracy in order for their product to reach the  
15 ultimate market, which is the class in our case. Thank  
16 you.

17 THE COURT: Indirect plaintiffs want to add  
18 anything?

19 MS. RUSSELL: Your Honor, I just want to cite  
20 to you some post Twombly cases that refute the  
21 defendants' argument that we must plead each defendant's  
22 participation in this conspiracy in elaborate factual  
23 detail. That is not the law.

24 THE COURT: Okay.

25 MS. RUSSELL: I will read to you from first of

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1 all --

2 THE COURT: No, just give me the cites, please,  
3 because I've got to read those cases myself.

4 MS. RUSSELL: The Graphic Processing Units, the  
5 case cite is 527 F. Supp. 2d. 1011. And the quote is  
6 (As read): The plaintiffs need not plead specific back  
7 room meetings between specific actors at which specific  
8 decisions were made.

9 THE COURT: What's the date of this? You say  
10 this is after Twombly.

11 MS. RUSSELL: It was after Twombly. I believe  
12 it was a 2008 decision. I have to double-check.

13 MR. LEHMANN: 2007.

14 MS. RUSSELL: From the LCD 1 case, when the  
15 court granted the defendant motions in certain instances  
16 and granted plaintiffs' leave to replead, the court said  
17 (As read):

18 In remanding the complaint, plaintiffs need  
19 not plead each defendants' involvement in the  
20 alleged conspiracy in elaborate detail, but  
21 must simply include allegations specific to  
22 each defendant alleging that defendant's role  
23 in the alleged conspiracy.

24 Your Honor, we have done that.

25 THE COURT: What's the date of LCD 1?

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1 MS. RUSSELL: Sorry. LCD was 2007 also, I  
2 believe, and LCD was 2008 and that was the case that  
3 held that plaintiffs, when they have amended their  
4 complaint and included allegations substantively similar  
5 to what we have here, the court finds that plaintiffs  
6 had alleged each defendant's involvement as to pass  
7 Twombly.

8 MR. SIMON: LCD 1 is 586 Fed. Supp. 2d. 1189,  
9 August 5th, 2008, and what we're calling --

10 THE COURT: 586 Fed. Supp 2d. what?

11 MR. SIMON: 1189. What we're calling LCD 2,  
12 which is really just the order on the second round of  
13 motions, is 599 Fed. Supp. 2d. 1179. That's March 3d,  
14 2009, your Honor.

15 MS. RUSSELL: And, your Honor, I would just  
16 like to refer you to page 40 of our opposition brief in  
17 which we describe read together each of the Panasonic  
18 entities was involved in the complaint. And I'd also  
19 like to refer your Honor to Footnote 48 of our  
20 opposition brief in which we explain why our allegations  
21 against Matsushita Malaysia should still be considered  
22 by your Honor in deciding whether Panasonic was involved  
23 in this conspiracy because we have specifically alleged  
24 that Matsushita Malaysia attended meetings in Malaysia,  
25 that they had a relationship with nearby competitors,

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1 including Chunghwa Malaysia, who is the amnesty  
2 applicant here, and specifically Matsushita Malaysia was  
3 engaging in these activities at the direction of  
4 Panasonic Corporation.

5 THE COURT: All right.

6 MS. RUSSELL: Okay, your Honor. Thank you.

7 MR. KESSLER: Very quickly, your Honor. I  
8 don't even have to walk to the podium. The GPU case was  
9 pre-Twombly.

10 THE COURT: I'm sorry.

11 MR. KESSLER: The first case she gave you. The  
12 LCD was post Twombly. Significantly Judge Illston first  
13 dismissed their case for failure to plead against  
14 individual defendants in LCD 1. In LCD 2, pre-Iqbal,  
15 she did sustain their new allegations, but even Judge  
16 Illston made them go back and replead against individual  
17 defendants because they didn't do it at all in LCD 1.

18 So neither of those cases is particularly  
19 helpful to them in arguing you don't have to plead  
20 against individual defendants because Judge Illston  
21 ruled that way.

22 With respect to the issue that PNA is a  
23 necessary implement of a conspiracy, that makes  
24 absolutely no sense. The mere fact that you're selling  
25 into a company the televisions, that doesn't mean

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1 they're necessary to a CRT conspiracy which we believe  
2 again is only conspiracy alleged in the complaint. PNA  
3 has nothing to do with CRT. They simply sell  
4 televisions.

5 THE COURT: I understand.

6 MR. KESSLER: And by the way, Best Buy also  
7 sells television. So Best Buy could be a necessary  
8 conspirator to them because you can't get to the  
9 ultimately consumer until you go through some other  
10 channel. That can't be possibly a basis to say you get  
11 locked into the case for that.

12 Finally, the last thing is it's very  
13 interesting. If you look at the indirect purchaser  
14 complaint in paragraph 148, for example, which is  
15 they're going through the different meetings that take  
16 place, so in 148 A they list who attended these  
17 meetings, no Panasonic, the Chinese glass meetings. In  
18 148 B, they talk about glass meetings in Europe. They  
19 allege who attended these meetings. No Panasonic. When  
20 you go on later to where they do talk about Panasonic,  
21 they end up not listing it anywhere.

22 So, for example, when you get to paragraph 164,  
23 they say (As read):

24 Bilateral discussions were also used to  
25 coordinate with CRT product manufacturers that

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1 did not ordinarily attend the group meetings,  
2 such as, among others, Panasonic.

3 Then when you look at where are those meetings,  
4 they give one example in 165, and here is an example of  
5 the bilaterally meetings they had, guess who's not  
6 mentioned, Panasonic.

7 So after having said that Panasonic does not  
8 ordinarily attend the group meetings but are in the  
9 bilateral, they then give only one example, and the one  
10 example they give there's no Panasonic in 165. So this  
11 again is the kind of conclusory pleading. Whenever you  
12 get to a fact, there is no there there.

13 THE COURT: All right. We'll take one more  
14 here before we take a break.

15 MR. ROGER: I think for Hitachi, your Honor, we  
16 only have a couple, three minutes. So maybe I'll go.

17 MR. SIMON: Where does that leave it on the  
18 eight? Half time.

19 MR. ROGER: I have to take a break also, so  
20 this will incent me to be quick, your Honor.

21 With respect to the lumping, nothing more to  
22 add to what counsel for Toshiba and Panasonic had to say  
23 because the paragraphs in the direct complaint or the  
24 indirect complaint deal with so-called Hitachi exactly  
25 the same way.

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1 I would just quote, because Hitachi was singled  
2 out in LCD, just quote from case wherein Judge Illston  
3 held (As read):

4 The court agrees general allegations as to,  
5 quote, all defendants, to, quote, Japanese  
6 defendants or as a single entity such as,  
7 quote, Hitachi is insufficient to put specific  
8 defendant on notice from the claims.

9 THE COURT: That's from LCD.

10 MR. ROGER: from LCD, yes, your Honor, 586 Fed.  
11 Supp. At 1117.

12 Then with respect with respect to actual  
13 allegations against the fictional Hitachi, again, the  
14 paragraph you ought to look at are in the direct  
15 complaint paragraph 157 and 158 and in the indirect  
16 complaint, paragraphs 179 and 180. Again, exactly the  
17 same kinds of allegations as against Toshiba and as  
18 against the Panasonic entities. So we would -- we've  
19 argued in detail in our papers what's wrong with them.  
20 So I won't repeat them here. I just wanted to have  
21 those before your Honor.

22 Finally, with respect to withdrawal, the  
23 plaintiffs themselves have conceded that Hitachi Ltd.,  
24 that's the parent company, spun off all of its CRT  
25 operations in 2002. That's the direct complaint at



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1 paragraph 31 and the indirect complaint at paragraph 88.  
2 We set forth the authorities in our briefs that we  
3 believe stand for the proposition that that is an  
4 effective withdrawal.

5 THE COURT: Spun off all what?

6 MR. ROGER: All of our CRT operations. So  
7 paragraph 31 of the direct complaint, for example, says  
8 at line 8 on page 7, paragraph 31, says (As read):

9 In 2002, all the departments of planning,  
10 development, design, manufacturing, and sales  
11 concerned with the display business of Hitachi  
12 Ltd. were spun off to create a separate company  
13 called Hitachi Displays.

14 And Hitachi Displays was added by the  
15 plaintiffs as a defendant in this case. And we've got  
16 the same allegations in the indirect purchaser  
17 complaint. That's all I have, your Honor.

18 THE COURT: Any reply to that?

19 MS. RUSSELL: Your Honor, can I take a quick  
20 break just before I respond?

21 THE COURT: Let's take a seven-minute recess.  
22 Resume as soon as the people are back in the room. Then  
23 we've got four more to go after that. So we'll be going  
24 to about 6:00 o'clock.

25 (Recess taken.)

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1 THE COURT: All right. Let's go ahead now,  
2 please. Ma'am, you wanted to speak?

3 MS. RUSSELL: Yes, your Honor. Again, your  
4 Honor, I'm going to be as brief as possible because I  
5 can tell your patience is wearing thin, but we do not  
6 simply make allegations against a fictional Hitachi.  
7 I'll refer you to pages 32 to 39.

8 THE COURT: Wait a second.

9 MS. RUSSELL: Page 32.

10 THE COURT: Wait a minute. Are you giving me  
11 pages of your brief?

12 MS. RUSSELL: Pages of our brief.

13 THE COURT: Or allegations in the complaint?

14 MS. RUSSELL: Pages in the brief which refer  
15 expressly to allegations in our complaint which are  
16 specific to the Hitachi defendants, each of the Hitachi  
17 defendants, I may add, not just Hitachi, as counsel  
18 keeps asserting.

19 And it also refers to allegations in the  
20 complaint that when read together, as I said previously,  
21 plausibly suggest that each of the Hitachi entities was  
22 involved in the conspiracy.

23 I feel it's necessary --

24 THE COURT: What pages are you giving me in the  
25 brief?

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1 MS. RUSSELL: Pages 32 to 39 of our brief.

2 THE COURT: 32 to 39.

3 MS. RUSSELL: Right. I feel it's necessary  
4 just to address briefly Hitachi's arguments regarding  
5 agency and point out to you that the agency allegations  
6 that we have here in our complaint are almost identical  
7 to the agency allegations made in LCD 2, and the cite is  
8 599 F. Supp. 2d. at 1184, and in that case Judge Illston  
9 found that those allegations were sufficient.

10 Taken together with the other allegations in  
11 the complaint which allege a conspiracy from the top  
12 down organized by the parent corporations, implemented  
13 by their subsidiaries and their employees, we allege one  
14 other aspect that people keep saying is that we should  
15 name specific people within the Hitachi entities or  
16 within any of the other defendant entities who attended  
17 these meetings. We allege the types of employees who  
18 attended these meetings, and that was expressly held  
19 sufficient in the LCD 2 case.

20 Moreover, your Honor, I think there has been  
21 some suggestion by defendants that LCD 2 has been  
22 overruled by Iqbal in that regard. The California Title  
23 Insurance case which the defendants cite in their brief  
24 and which could somebody please get me a cite for? The  
25 California Title Insurance case is a post Iqbal case

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1 which cites first to LCD 2 with approval in regards to  
2 their finding that it was sufficient just to name the  
3 types of employees who were involved in the meetings.  
4 And in addition, the California Title Insurance case  
5 also discusses LCD's holdings --

6 THE COURT: What is the cite in California  
7 Title?

8 MS. RUSSELL: 2009 WestLaw 145802.

9 THE COURT: I'm sorry. 145 what?

10 MS. RUSSELL: Eight. I'm sorry. Your Honor, I  
11 have an accent. It comes out when I say certain words.

12 MR. SAVERI: Thank God it's not Canadian.

13 THE COURT: 145.

14 MS. RUSSELL: 8025.

15 MR. ROGER: Do you have a date on that?

16 MS. RUSSELL: That was May 21st, 2009.

17 THE COURT: All right.

18 MS. RUSSELL: And just I think there has also  
19 been some criticism of lifting our allegations, I think  
20 the defendants say lifting allegations from the LCD case  
21 and using them in this case, and what the defendants are  
22 completely ignoring is the substantial overlap between  
23 the LCD case and this case.

24 We have numerous defendants that are in the LCD  
25 case and are also in this case. Chunghwa, the two

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1 Chunghwa executives who have been indicted in CRT were  
2 also indicted in LCD. Hitachi Displays, which they, of  
3 course, would rather you not hear, has also pled guilty  
4 in LCD. Hitachi Displays or the Hitachi entities are  
5 members of the trade associations with Samsung,  
6 Chunghwa, several of the other -- excuse me. I can't  
7 remember which other defendants. But several of the  
8 other defendants in this case.

9 All of these allegations set the context that  
10 the Supreme Court in Iqbal said you, as the judge  
11 deciding this motion to dismiss, must consider whenever  
12 you are looking at our complaints and deciding whether  
13 we have alleged a plausible claim for relief.

14 Thank you, your Honor.

15 THE COURT: All right. Next defendant.

16 MR. LEHMANN: Well, your Honor the direct  
17 purchasers.

18 THE COURT: I thought you passed.

19 MR. LEHMANN: No, we didn't pass. She went  
20 first. I'll try to be brief.

21 THE COURT: We're going to be here till about  
22 7:00 o'clock the way we're going.

23 MR. LEHMANN: I'll try to be brief. The full  
24 argument of Hitachi is found at pages 83 to 92 of our  
25 opposition brief.

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1 THE COURT: Wait a minute. You're talking  
2 about your brief again.

3 MR. LEHMANN: 83 to 92 of opposition brief is  
4 where we fully describe our arguments with respect to  
5 Hitachi.

6 With respect to the complaint, what we allege  
7 is we have these corporate family allegations that  
8 applied to Hitachi as well as to the other defendants.  
9 They're in paragraph 154. We describe these various  
10 types of meetings by category and by category of  
11 attendee, they're at 134 through 153 of the complaint.

12 Then with respect to the Hitachi corporate  
13 family's participation in those meetings, we allege in  
14 157 that they participated in over a dozen illegal  
15 bilateral and group meetings from '96 to 2001 that took  
16 place in Taiwan and China. We described the role,  
17 that's at paragraph 157. And at paragraph 158 we  
18 describe the role that the American subsidiaries of  
19 Hitachi played in connection with the conspiracy. Both  
20 paragraphs relate to the CRT product conspiracy. We  
21 also allege in paragraph 124 the \$31 million fine that  
22 Hitachi Displays paid.

23 THE COURT: I'm sorry. What paragraph?

24 MR. LEHMANN: Paragraph 124. The \$31 million  
25 that Hitachi Displays had to pay as part of its pleading

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1 guilty to participation in the LCD's conspiracy, and  
2 your Honor may remember we pointed this out in our  
3 brief, there are cases in this district, SRAM and Flash  
4 Memory that have said in terms of evaluating the  
5 plausibility of the complaint before you, you can look  
6 at guilty pleas by the same defendant in related  
7 industries. So that's a factor to consider here.

8 I'd like to clear up one quick thing and it was  
9 alluded to by Lauren. There are two LCD opinions. The  
10 first one Judge Illston did indeed require the  
11 plaintiffs to replead. The second one the plaintiffs  
12 did replead, and they allege the same type of thing  
13 here, but not only in terms of the family of the  
14 corporation, but also in terms of the meetings. They  
15 didn't allege who in particular attended. They didn't  
16 allege the exact time. They had a description of  
17 hundreds of types of meetings and the participation of a  
18 family of corporations in those meetings.

19 Judge Illston held, and I think this is kind of  
20 important to note, 599 Fed. Supp. 2d. at page 1185. She  
21 said (As read):

22 The complaints allege a complex  
23 multinational price fixing conspiracy and taken  
24 as a whole they sufficiently allege each  
25 defendant's participation in that conspiracy as

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1 well as present a factual basis for the  
2 allegations of agency.

3 Exhibit 3 to the Saveri declaration submitted  
4 in support of our opposition brief has a side-by-side  
5 comparison. That's instructive in terms of the adequacy  
6 of this complaint. I also think in terms of the agency  
7 allegations if you look at Weinstein versus Saturn  
8 Corporation, 303 Federal Appendix 424, Ninth Circuit,  
9 2008, and Dion LLC versus Infotech, 2007 WestLaw  
10 3231738, there is a support that fairly conclusory  
11 agency allegations will suffice for purposes of notice  
12 pleadings in all of these.

13 When you see the defendants respond to this  
14 argument on agency, you see them rely on lot on summary  
15 judgment cases. We're at the pleading stage here. The  
16 summary judgment cases are inapposite.

17 Thank you, your Honor.

18 MR. MILLER: Sam Miller, Sidley Austin on  
19 behalf of LG Electronics, and I'm going to give you a  
20 chart so you can figure out who's who with respect to  
21 the LG Electronics. One for the judge, one for direct  
22 purchasers. I don't have one for everyone. One for  
23 Mario.

24 So, your Honor, I direct you first to the  
25 indirect purchaser complaint because it identifies the



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1 LG entities and then explains why we should be dismissed  
2 out of this case. If you look at paragraph 50, 50, 5-0.

3 THE COURT: Just a second. So we're going to  
4 indirect.

5 MR. MILLER: Paragraph 50.

6 THE COURT: This is not the brief. It's the  
7 complaint.

8 MR. MILLER: It's the complaint. So it's page  
9 9, paragraph 50.

10 THE COURT: All right.

11 MR. MILLER: So LG Electronics is a Korean  
12 corporation. It's based in Seoul, Korea. And if you  
13 look at the top right-hand corner of my chart, it's LG  
14 Electronics and we refer to LGE.

15 Paragraph 51 talks about LG Electronics U.S.A.,  
16 which is here on my chart is a subsidiary of LG  
17 Electronics. As you've heard from others, it's a  
18 marketing subsidiary. It doesn't make anything. It  
19 markets its products in the United States. That's a  
20 defendant.

21 And also the plaintiffs have named a separate  
22 subsidiary of LG based in Taiwan. That's paragraph 52.  
23 And that's LG Taiwan Taipei which they refer to as LGTT.  
24 LGTT has never sold anything in the United States, and  
25 it is the marketing arm in Taiwan, but those two are

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1 wholly owned subsidiaries of the parent LG Electronics.

2 Look at line 12 of paragraph 50 in the  
3 complaint and it says (As read): In 2001, LG  
4 Electronics transferred its CRT business to a 50/50 CRT  
5 joint venture with defendant Phillips.

6 All right? So that allegation makes clear that  
7 LG Electronics spun off and sold its CRT tube  
8 manufacturing business to a totally separate entity in  
9 which, according to this allegation, it's a 50 percent  
10 shareholder. For these purposes, we'll take that. But  
11 it's a totally separate entity, and if you look up on  
12 the top right of my chart, that's what we call LP  
13 Display.

14 If you go to paragraph 61 of the joint -- of  
15 the indirect purchaser complaint, you see that LP  
16 Display is properly regarded as separate from the LG  
17 family of entities. It is a separate entity and it is  
18 alleged as such in the indirect complaint. It is the  
19 manufacturer of tubes, and since --

20 THE COURT: Okay. Manufacturing and sells  
21 tube.

22 MR. MILLER: And there is no dispute. I think  
23 everyone will agree. It is a manufacturer of CRT tubes,  
24 and it sold tubes to a number of different companies,  
25 including LG Electronics and others. All right?

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1 LG Electronics is clearly alleged post 2001 to  
2 be a buyer of tubes, not a seller. If you look at  
3 paragraph 128 K of the indirect complaint, you will see  
4 that there are allegations that LG was a buyer of CRT  
5 tubes not only from LP Display, the joint venture, but  
6 also from Samtel, which is a totally separate company.

7 The basic point, your Honor, is that the  
8 complaint on its face makes clear that post 2001, six  
9 years before the first complaint was filed, LG  
10 Electronics was a buyer of tubes, not a seller.

11 You heard Mr. Simon explain why Sony and Sharp  
12 are not named as defendants. What did he say? He said  
13 they were buyers of tubes. They were victims of this  
14 conspiracy. Post 2001, LG Electronics and its two  
15 subsidiaries are in exactly the same place.

16 The indirect purchaser complaint, as we have  
17 talked about before, makes clear in paragraph 227 that  
18 the purchasers -- I'm sorry -- the manufacturers of  
19 finished products, the manufacturers of the CRT finished  
20 products, the monitors and the TV's are subject to  
21 vigorous price competition. So they're in a highly  
22 competitive market. That's paragraph 227. That  
23 includes LG Electronics as a seller of finished TV's and  
24 monitors.

25 Interestingly, I think this is significant, in

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1 paragraph 225 of the indirect purchaser complaint, the  
2 indirect purchasers actually identify who are the direct  
3 purchasers, and what do they say? In paragraph 225,  
4 they say the direct purchasers are the CRT TV and  
5 monitor manufacturers.

6 We agree with that. Those are the proper  
7 direct purchasers, not the retailers. The only properly  
8 alleged conspiracy, if there is one at all as we've  
9 discussed, has to do with a tube conspiracy. The direct  
10 purchasers of that conspiracy are my client. So my  
11 client should be a victim, not a defendant in this case.  
12 And when I say my client, I'm talking about LG  
13 Electronics and its two marketing subsidiaries.

14 We've talked a little bit about the impact or  
15 actually a lot about Iqbal, but I would say this. In  
16 the old days when you were on the district court  
17 under --

18 THE COURT: Don't make me sound that ancient.

19 MR. MILLER: But under Conley versus Gibson,  
20 the plaintiffs could shoot first and ask questions  
21 later, and that's how things proceeded. The complaints  
22 went forward and the judges thought I'll let it go,  
23 we'll sort it out later through summary judgment or  
24 settlement, and as you know, most cases got settled.

25 I think that the Supreme Court in recent cases,

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1 Twombly, Iqbal, even the Trinko case makes clear that  
2 antitrust cases should be weeded out earlier. Not that  
3 there's a heightened pleading standard, but it's your  
4 role as the judge not to wait till later and hope it  
5 gets sorted out, but to figure out what is the proper  
6 claim, what's the scope of the proper claim, who are the  
7 right defendants, who should be out of the case and to  
8 do it now, not say, I'll deal with that later.

9 If you did that, then whoever would be in the  
10 complaint, and the plaintiffs have said Chunghwa for  
11 sure because they're the cooperator, you should sort out  
12 and say there are 50 defendants named, but really there  
13 are plausible allegations only as to some, not all. And  
14 it doesn't make sense that LG Electronics that was a  
15 buyer since 2001 would be on the other side of the V  
16 here because we are a victim.

17 So where does the statute limitations or  
18 fraudulent concealment come in? If you -- this is not a  
19 case where if you accept our argument that the  
20 plaintiffs have not sufficiently alleged fraudulent  
21 concealment, the case goes away or it gets thrown out.  
22 The practical effect is that the damage period is  
23 limited to the 2003 to 2007 and that is appropriate  
24 given the lack of proper and sufficient fraudulent  
25 concealment allegations here.

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1           So, in other words, if you agree with us that  
2     fraudulent concealment is not properly pled, it doesn't  
3     mean the plaintiffs doesn't have a claim. It means that  
4     the damage period is 2003 to 2007, and as you know, your  
5     Honor, that's going to be to make a big difference and  
6     make a lot easier in case management, in class  
7     certification, in resolution of this as we go forward.

8           We've talked about the Barker case, and I want  
9     to say one thing because I am not -- my client LG  
10    Electronics is not in the LCD case. We're not in SRAM,  
11    we're not in Flash Memory. So far we're stuck in this  
12    one and I hope you'll let us out.

13          But we went back and looked at the briefs and I  
14    have to take credit, but my team here found the Barker  
15    case. It's dispositive controlling Ninth Circuit  
16    precedent on the issue of whether the issue of  
17    fraudulent concealment must be alleged defendant by  
18    defendant. We went back to look, and I don't believe it  
19    was even cited to Judge Illston in the LCD case on the  
20    issue of fraudulent concealment. So she found  
21    fraudulent concealment by one can apply to all.

22          She is just wrong. Certainly it's not cited or  
23    distinguished in her decision on this which has been  
24    cited to you a million times.

25          Now, the plaintiffs, Mr. Rushing, who used to

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1 work with me a long time ago, said, Well, Barker doesn't  
2 apply because it doesn't apply to conspiracy cases. It  
3 is an ERISA case, it's not an antitrust case; but as you  
4 know, there are a lot of cases that actually interpret  
5 ERISA with antitrust and vice versa. But,  
6 interestingly, if you look at the cases that are cited  
7 in Barker, they include Gibson, which is a civil rights  
8 conspiracy case, Griffin, a RICO conspiracy case, and  
9 O'Brien, a RICO and securities case.

10 THE COURT: Tell me again what Barker stands  
11 for?

12 MR. MILLER: Barker stands for the proposition  
13 that fraudulent concealment allegations must be specific  
14 to each defendant. You can't say, well, there was  
15 generalized fraudulent concealment. You have to look  
16 and see whether --

17 THE COURT: This is even before Twombly.

18 MR. MILLER: This is before Twombly. This is  
19 an old case. We found it, and I don't believe it was  
20 cited to Judge Illston and it's not in her opinion and I  
21 think it's controlling. And what that case says is you  
22 have to have specific concrete allegations satisfying  
23 Rule 9(b) to go back more than four years.

24 Again, that's the consequence here. So we're  
25 not saying there isn't a claim. We're saying the claim

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1 here should be limited 2003 forward, and unless the  
2 plaintiffs can satisfy specific allegations as to a  
3 particular defendant, then they can't assert a class and  
4 you shouldn't let damages go forward back to 1995, which  
5 is what the plaintiffs are asserting here.

6 And Barker relies on conspiracy cases and I  
7 think it is the controlling rule in the Ninth Circuit,  
8 and as I said, it relies on the O'Brien case which  
9 specifically says (As read): The failure of plaintiffs  
10 to identify specifically which of the defendants  
11 committed any of the above enumerated acts of  
12 concealment is fatal. Fatal. That's the word used.

13 So if you apply Barker --

14 THE COURT: I understand.

15 MR. MILLER: Then I think the plaintiffs have  
16 conceded they haven't tried to allege fraudulent  
17 concealment defendant by defendant because they said  
18 they didn't have to, and I'm saying they have to and  
19 they failed; and, therefore, we shouldn't -- we should  
20 only go forward if there's any claim 2003 forward.

21 Now, I told we became a buyer in 2001, and I  
22 contend that as a matter of law that that means we  
23 withdrew from this conspiracy because there are cases,  
24 and they are cited in some of the briefs, the car  
25 carrier case, Toyota case that say it makes no sense for



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1 you to conspire to increase the price of an input. It  
2 makes no sense. It's not plausible, and you heard -- I  
3 don't want to repeat the argument. It's been made  
4 before.

5 So let me just give you what I think are the  
6 controlling cases on why we withdrew as a matter of law.  
7 One is Lothian, L-o-t-h-i-a-n, which both sides have  
8 cited, and that says -- that involved a defendant who  
9 was in a conspiracy for a while, left and went off  
10 somewhere else and then actually came back, and the  
11 issue was could he be sentenced for all the counts  
12 where -- and the Ninth Circuit actually reversed his  
13 conviction as to the substantive counts of mailing -- I  
14 think it was a mail fraud when he went there. He had  
15 left, went off to Australia and they said if you cease  
16 participating in the scheme, and here it's the price  
17 fixing on tubes, then you're out of it. And that is  
18 withdrawal.

19 So that's one case that supports. Becoming a  
20 buyer -- becoming a buyer of tubes, not a seller, should  
21 constitute withdrawal as a matter of law. So we did  
22 three things. We spun off the business, we ceased  
23 making tubes and we became a buyer.

24 I don't believe of all the meetings that the  
25 plaintiffs talk about that LG was there post 2001. If

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1 they have evidence, they haven't put it in the  
2 complaint. And I would say this, your Honor, again as a  
3 practical matter when you're judging this, this is an  
4 unusual case because the plaintiffs, they say it right  
5 out in their brief, they have the -- they have  
6 everything. They have a cooperating witness who has  
7 told them everything about this. So this isn't a case  
8 where they say, well, we have to wait for discovery  
9 because they know more than I do, and I've told that  
10 Guido and Bruce Simon here, but this is a unique  
11 situation where they have every detail.

12 MR. SAVERI: But I asked you to check with your  
13 clients and you didn't. Okay? Why don't you tell him  
14 that, tell him I asked to check with your clients and  
15 file a verified complaint and you didn't. Don't give me  
16 that baloney.

17 MR. MILLER: If they had specific allegations  
18 that LG was there as opposed to this other entity that  
19 they're trying to -- they're trying to attribute acts of  
20 the joint venture to us post 2001, and my point is under  
21 principle they gave up on alter ego.

22 THE COURT: I understand.

23 MR. MILLER: That's why I'm out if you look at  
24 Nippon Paper case, Morton's Market, Lothian, as a matter  
25 of law, we should be out and there is no fraudulent

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1 concealment.

2 MR. SIMON: Can I say one thing for full  
3 disclosure on the record? It's not an important point.  
4 Because Mr. Fastiff and Luke Fraser and myself are  
5 co-lead counsel in LCD; I believe we entered into a  
6 tolling agreement with your client in LCD. So you're  
7 not out just yet.

8 MR. MILLER: They dismissed us.

9 THE COURT: Make him an offer.

10 MR. MILLER: They know we are not in that case,  
11 you know. We have not received a grand jury subpoena,  
12 we have not received a grand jury subpoena in this case.  
13 And we are dismissed out of that case.

14 MR. SAVERI: But you've got a tolling  
15 agreement.

16 MR. SIMON: Keep talking. You may never get  
17 out.

18 MR. MILLER: All right. I'll sit down.

19 MR. SPECKS: Your Honor Gary Specks, Kaplan Fox  
20 on behalf of the direct plaintiffs.

21 First of all, the LG defendants' reliance on  
22 the Barker case is misplaced because it's not a  
23 conspiracy case. It was an ERISA case. We cite three  
24 appellate decisions in our brief which hold that acts of  
25 concealment of one defendant co-conspirator undertaken

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1 during the course of and furtherance of a conspiracy are  
2 attributable legally to all codefendant co-conspirators  
3 under principles of substantive conspiracy law which  
4 have been in effect for probably a hundred years.

5 THE COURT: That still apply.

6 MR. SPECKS: Absolutely still apply.

7 THE COURT: After Iqbal?

8 MR. SPECKS: There's nothing in Iqbal or  
9 Twombly or any of the cases that defendants cite that  
10 abolished settled substantive principles of conspiracy  
11 law. We cite those cases, those appellate decisions, on  
12 page 28 and 29 of our joint opposition.

13 Now, even if we assume that we had to make some  
14 type of specific allegation as to LG, I would refer your  
15 Honor to paragraph 210 of our complaint which does make  
16 a specific allegation. It says (As read): Manufacturers  
17 such as LG Electronics periodically issued press  
18 statements falsely asserting that CRT prices were being  
19 driven lower by intense competition.

20 That's pretty specific. Even though we didn't  
21 have to make a specific allegation as to every  
22 defendant, that's pretty specific. It's pretty  
23 understandable. I think it would be enough for him to  
24 check with his client to see if that occurred.  
25 Certainly gives him notice of what we're claiming.

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1           Second allegation that they make or contention  
2   that they have is that they withdrew from the conspiracy  
3   in 2001, and the sole basis for that allegation is their  
4   assertion that in 2001 they formed a joint venture with  
5   one of defendant co-defendant co-conspirators, Royal  
6   Phillips called LG Phillips Display, which later changed  
7   its name to LP Displays. And this joint venture was  
8   also a named defendant conspirator in the case, and that  
9   they combined their CRT businesses into this joint  
10   venture. It was a 50/50 joint venture, 50 percent owned  
11   by Royal Phillips, 50 percent by LGEI, and that they  
12   continued to sell CRT tubes through this joint venture  
13   into 2007 when they sold it and it became an independent  
14   company in 2007. Until 2007, it was jointly owned by  
15   Royal Phillips and by LGEI, they were refer to it as  
16   LGE, LG Electronics.

17           That's hardly the stuff of which withdrawal is  
18   made. There is no complaint allegation indicating LG  
19   Electronics disavowed the goal or purpose of the  
20   conspiracy or that it affirmatively acted to defeat the  
21   conspiracy or that it took definite decisive positive  
22   steps to disassociate itself from the conspiracy or its  
23   co-conspirators. That's what the Ninth Circuit says is  
24   required to establish withdrawal.

25           In point of fact, the formation and operation

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1 of this joint venture with its defendant co-conspirator  
2 Royal Phillips furthered the purposes of the conspiracy  
3 and certainly couldn't have constituted a withdrawal.

4 Now, nowhere in any of their papers or anything  
5 they've filed do they contend that they exited the  
6 business of manufacturing and selling products  
7 containing CRT's. So there wasn't some complete  
8 withdrawal from the business of manufacturing and  
9 selling all the products which we allege were the  
10 subject of the conspiracy. So there was no complete  
11 disassociation from the conspiracy, from the  
12 co-conspirators, there was no complete withdrawal.  
13 That's my next point.

14 With respect to the specific allegations  
15 regarding the LG defendants, those allegations appear at  
16 160 to 161 and 154 of our complaints.

17 THE COURT: Just a moment, please.

18 MR. SPECKS: That's 160 to 61 and the 154 is  
19 the representation agency allegation. It alleges that  
20 they participated in more than 12 bilateral and more  
21 than 100 group meetings from 1995 through 2006. Now,  
22 how is that consistent with their contention that they  
23 withdrew in 2001. We have specifically alleged that  
24 they participated in the conspiracy '95 through 2006.

25 In the procedural context in which their

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1 contention of withdrawal arises, they have to show that  
2 the face of the complaint we filed establishes there are  
3 withdrawal as a matter of law. Well, our complaint  
4 allegations are obviously inconsistent with any  
5 contention that that they withdrew in 2001 since we're  
6 asserting that they participated through 2006.

7 Now, we describe these meetings that they  
8 attended in 19 paragraphs of the complaint, paragraphs  
9 134 to 153. We don't stop there, your Honor. We allege  
10 more. We allege that they also participated and were  
11 represented at trade association related meetings where  
12 there was an exchange of competitively sensitive and  
13 proprietary information which was used to implement and  
14 maintain the conspiracy. That's paragraphs 176 to 180.

15 They were asking for names, your Honor. Look  
16 at 178. We gave them names. Maybe now they'll want the  
17 shoe sizes of people who attended the meeting.

18 THE COURT: I'm sorry. It's too late in the  
19 day for attempted humor. Stick with telling me what I  
20 need to know.

21 MR. SPECKS: I apologize, your Honor. In any  
22 event, I think those allegations are certainly more than  
23 specific enough to inform them of what they're charged  
24 with and more than specific enough to tie them to the  
25 conspiracy that we allege.

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1           Now, again, I would again refer your Honor to  
2     the Reisman decision because the Reisman decision  
3     basically says that the fact that they didn't completely  
4     disassociate themselves from the conspiracy and  
5     continued to have a stockholder interest in one of the  
6     conspirator defendants until 2007 precludes any kind of  
7     a finding that they withdrew from the conspiracy under  
8     Reisman, and that's 409 F. 2d. 789.

9           Your Honor, I have nothing further unless your  
10    Honor has some questions.

11           MS. RUSSELL: 30 seconds, your Honor, on LG.

12           THE COURT: Indirect plaintiffs?

13           MS. RUSSELL: I just want to direct your Honor  
14    to the paragraphs in our complaint which I believe  
15    allege that the formation of LG Phillips displays or  
16    LPD, as it was referred to, was an overt act in  
17    furtherance of the conspiracy by LG and Phillips, and  
18    those paragraphs are 125, 126, 127, 128, 168 and 169 and  
19    172.

20           And in particular I want to point out in  
21    paragraph 162 we allege that it was the same --

22           THE COURT: 162 or 172?

23           MS. RUSSELL: Sorry. 172. In 172, we allege  
24    that it was the same executives from LG who attended the  
25    meetings and then attended, you know, before 2001, and



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1 then those same employees attended the meetings after  
2 2001 on behalf of the joint venture, LP Displays. I  
3 think that shows you that there was a continued  
4 participation and control by LG and Phillips in the CRT  
5 conspiracy after 2001 and that should dispose of their  
6 argument that they withdrew from this conspiracy.

7 Thank you, your Honor.

8 THE COURT: All right. Number six. Whoever  
9 that is.

10 MR. RIPLEY: Good afternoon, your Honor.  
11 Richard Ripley on behalf of -- I'll use the plaintiffs'  
12 terms -- Royal Phillips, Phillips America, Phillips  
13 Electronics Taiwan and what we call Phillips Brazil, and  
14 because of the stipulation, your Honor, we're not going  
15 to be talking about the allegations with respect to  
16 Phillips Taiwan or Phillips Brazil. Those two entities  
17 have pending personal jurisdiction motions. So my brief  
18 time before you this afternoon will focus on Royal  
19 Phillips and Phillips America.

20 THE COURT: I'm sorry. My notes. I thought  
21 there was only one still left. Royal Phillips  
22 Electronics.

23 MR. RIPLEY: I'm sorry. The door. I couldn't  
24 hear you.

25 THE COURT: You say -- what's the other

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1 Phillips that's still in here?

2 MR. RIPLEY: There's K. Phillips or Phillips  
3 America, we call it PENAC, P-E-N-A-C. Some of the  
4 plaintiffs refer to them as Phillips America. Okay?

5 And our brief, just for the record and for your  
6 Honor, is document 476 on the docket if you want an easy  
7 reference to it. That is our motion to dismiss. 476.

8 I'd like to start with Phillips America, your  
9 Honor. There is one allegation in the complaints, one  
10 allegation in the direct purchasers' complaint, one  
11 allegation in the indirect purchasers' complaint with  
12 respect to Phillips America. And that the allegation  
13 that Phillips America was represented at meetings and a  
14 party to the agreements entered at those meetings.

15 THE COURT: Okay. Would you give me a  
16 paragraph number, please?

17 MR. RIPLEY: Sure. In the direct purchasers'  
18 complaint it is paragraph 165 and in the indirect  
19 purchasers' complaint it is paragraph 171.

20 THE COURT: All right.

21 MR. RIPLEY: All right? That is the only  
22 allegation as to Phillips America, that they were  
23 represented at the meeting. There is no allegation that  
24 Phillips America attended a single meeting and there is  
25 no allegations that they participated in the conspiracy

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1 aside from this single statement.

2 So it's clear that both the direct and indirect  
3 purchasers are attempting to bring in Phillips America  
4 by claiming that they had somehow authorized someone at  
5 the meeting, at these meetings to speak on their behalf  
6 or to somehow bind them, but there is no facts stated  
7 that would allow this court to infer such an agency  
8 position, none.

9 With respect to what you, your Honor, referred  
10 to as K Phillips, there is only the allegations that  
11 have been stated to you which is paragraph 164 in the  
12 direct purchasers' complaint, and 170 in the indirect  
13 purchasers' complaints.

14 THE COURT: 154 in direct.

15 MR. LITWIN: 164, your Honor.

16 MR. RIPLEY: 164 in the direct purchasers and  
17 one 70 in the indirect purchasers.

18 And that's the one where they identify K  
19 Phillips as attending at least a hundred meetings.  
20 Again, this is what Iqbal calls a bare assertion and  
21 Iqbal says that with a bare assertion it's not entitled  
22 to the -- it's not entitled to the presumption of truth.

23 And in fact, the paragraphs that have been  
24 recited time and again by the plaintiffs, by the direct  
25 plaintiffs, that are sufficient to meet the minimum

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1 standard talk about this phrase attending defendants,  
2 the attending defendants did this, the attending  
3 defendants did that, and that's in paragraphs 142 to 149  
4 of their complaint. But they don't say who the  
5 defendants are. They just say the attending defendants.  
6 And that again is a bare assertion. Who are the  
7 defendants? They don't identify them.

8 So based on that and with respect to the post  
9 2001, I'm not going to repeat what my co-counsel has  
10 stated about for LG. I'm not to go in and go through  
11 that again because it's getting late in the day.

12 THE COURT: When was it you withdrew?

13 MR. RIPLEY: Well, we sold in 2001. And you  
14 just heard counsel --

15 THE COURT: No, I understand.

16 MR. RIPLEY: So I won't need to go through that  
17 again.

18 THE COURT: I forgot the date on which you said  
19 you divested.

20 MR. RIPLEY: What we have with respect to these  
21 two, K. Phillips and Phillips America, with the Phillips  
22 America we have a single allegation they were  
23 represented at the meeting. That's a bare assertion.  
24 They aren't alleged to have attended any of the  
25 meetings.

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1           It's one of these things where I remember my  
2 tort professor telling us that you assume all, let them  
3 sort it out. Unfortunately, that falls -- the sorting  
4 out falls to your Honor, and based on the allegations,  
5 the single allegation with respect to Phillips America,  
6 it doesn't give any -- give you any facts that would  
7 allow you to infer participation by that corporation.

8           Before I sit down, I want to just encourage  
9 your Honor to read the title insurance case that  
10 Ms. Russell cited to you that she said was a post  
11 Twombly case.

12           MS. RUSSELL: Sorry. It was post Iqbal.

13           MR. RIPLEY: Well, post Twombly, post Iqbal.  
14 It's a 2009 case.

15           THE COURT: Do I get a cite to that?

16           MR. RIPLEY: Yes, you do, your Honor, but the  
17 cite was a WestLaw cite. I unfortunately --

18           THE COURT: Here it is. 2009 WestLaw.

19           MR. RIPLEY: I'm reading from the Lexus  
20 version, but it's the same opinion, right? And they  
21 state that there the plaintiffs argue that they need not  
22 assert overt acts and that the plaintiffs' attempt to  
23 show that the corporations directly participated in the  
24 conspiracy by making general allegations as to families  
25 of companies without any specific allegations as to what

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1 particular corporations in the families did.

2 And there they say those allegations are  
3 insufficient to put those corporations on notice as of  
4 the claim. So I encourage you to read that case, your  
5 Honor. And although it cites the LCD 2 opinion, it says  
6 that you need to allege facts that show that the  
7 corporations knew what -- that the parent corporations  
8 knew what the subsidiary corporations were doing, and  
9 then they cite to the LCD 2 and they say where you don't  
10 show specific facts that demonstrate that a parent  
11 corporation, in this case K. Phillips, knew what the  
12 plaintiffs were doing, that you don't satisfy Iqbal and  
13 Twombly.

14 THE COURT: Thank you. Reply by direct  
15 plaintiffs?

16 MR. LEHMANN: Michael Lehmann again, your  
17 Honor. I will be brief.

18 With respect to Phillips America, counsel has  
19 identified the correct paragraph, 165 of the direct  
20 purchaser complaint. That has to be read in the context  
21 of the preceding paragraph 154 that describes the family  
22 of corporations which are applicable to Phillips, and as  
23 I've set forth before, that's sufficient for agency  
24 purposes under TFT LCD's.

25 With respect to.

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1 Phillips K, I would contend base assertion that  
2 wouldn't survive under Iqbal would be this. Phillips K  
3 attended meetings at which it conspired with other  
4 defendants to fix prices for CRT products. That clearly  
5 wouldn't do what paragraph 164 says (As read):

6 Phillips through Royal Phillips, these  
7 various other entities and the LGPD joint  
8 venture entities participated in over 100  
9 illegal bilateral group meetings from 1996 to  
10 2007 in which unlawful agreements as to inter  
11 alia price output restrictions and customer and  
12 market allocation of CRT products occurred.  
13 These included several bilateral meetings and  
14 over 100 group meetings of the types described  
15 herein.

16 And that's the reference to the 19 paragraphs  
17 that preceded it that described what happened.

18 And these meetings occurred in Korea,  
19 Taiwan, Malaysia, China, Scotland, the UK and  
20 various locations in Europe. Phillips  
21 participated through Royal Phillips or its  
22 subsidiaries in 2001 and participated  
23 thereafter through LGPD. Phillips never  
24 effectively withdrew from this conspiracy.  
25 That, I submit, provides more facts and

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1 provides sufficient notice after Twombly and after  
2 Iqbal, and that's pretty much identical to what was  
3 deemed sufficient in the one case that's closest to this  
4 one, LCD's.

5 With respect to the argument that the Phillips  
6 defendants withdrew from the conspiracy, Mr. Specks has  
7 already laid that out. I'm not going to repeat it.

8 THE COURT: Anything from indirect?

9 MS. RUSSELL: Your Honor, we have nothing  
10 further. It's in our briefs. I just refer to our  
11 opposition brief at page 41. That discusses the various  
12 Phillips entities' participation.

13 THE COURT: Page what? Page 41?

14 MS. RUSSELL: Page 41, yes, sir.

15 THE COURT: All right. Who is next, please?

16 MS. McMILLAN: Good afternoon. I'm Kate  
17 McMillan for Beijing Matsushita Color Company, BMCC.

18 THE COURT: Beijing Matsushita. Okay.

19 MS. McMILLAN: As you know, BMCC has joined in  
20 the joint motion to dismiss and it's also filed its own  
21 individual motion raising particular deficiency in the  
22 complaint as to BMCC. I'd like to highlight --

23 THE COURT: I want to get this BMCC defined  
24 again, please.

25 MS. McMILLAN: Beijing Matsushita Color CRT



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1 Company.

2 THE COURT: That's what you're calling MCC.

3 MS. McMILLAN: BMCC. Yeah, it's a little bit  
4 easier.

5 THE COURT: All right.

6 MS. McMILLAN: Your Honor may not be as  
7 familiar with BMCC as with many of the other defendants  
8 in this case.

9 THE COURT: No, I don't think I've heard about  
10 them in the marketplace.

11 MS. McMILLAN: And that's not surprising. They  
12 haven't come up at all in today's argument and it's not  
13 a household name and, indeed, their mentioned very  
14 rarely in the complaints.

15 Both sets of plaintiffs recognize that BMCC is  
16 a Chinese CRT manufacturer. That is, they only  
17 manufacture the tubes, they don't manufacture any  
18 televisions, any computer screens, any finished  
19 products.

20 Now, both sets of plaintiffs allege or assert  
21 that BMCC manufactured, sold, or distributed CRT  
22 products throughout the U.S.

23 THE COURT: Products.

24 MS. McMILLAN: Products. That's wrong all the  
25 way around. As I mentioned, BMCC is solely a CRT

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1 manufacturer, not a finished product manufacturer.  
2 Further, those tubes are only manufactured in China.  
3 It's a domestic Chinese company. They have no U.S.  
4 offices, no U.S. sales force, no U.S. presence. So it's  
5 not surprising that plaintiffs have had a hard time  
6 alleging that BMCC participated in any plausible  
7 conspiracy, let alone one actionable under U.S. law.

8           Moving on to the specifics of the complaints,  
9 BMCC -- well, we believe that both complaints consist  
10 largely of legal conclusions rather than facts, and I  
11 won't repeat the arguments there, but even if one were  
12 to accept the conclusions as facts, the complaints do  
13 not allege sufficient facts as to BMCC.

14           Direct purchasers' complaint alleges facts  
15 relating to BMCC's participation in meetings in only one  
16 paragraph, and that's paragraph number 173. Indirect  
17 purchasers make similarly brief assertions in three  
18 paragraphs, and I'll get into those in a moment, but  
19 those are paragraphs 1, 148 A and 184.

20           So turning first to the direct purchasers'  
21 complaint, and to paragraph 173 in particular, it states  
22 that -- I'll just recite part of it for you. (As read):

23           BMCC participated in over 20 illegal  
24 bilateral group meetings between 1998 and 2001  
25 in which unlawful agreements as to CRT products

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1 occurred. These meetings occurred in China.

2 And that's it, your Honor. That's all we have.

3 That's all we know. That's the only paragraph that's  
4 specific to BMCC in all of direct purchasers' paragraphs  
5 attempting to allege facts regarding the defendants.

6 They today and in their opposition have urged the court  
7 to look at the complaint as a whole. So we have  
8 attempted to do that. In looking at the complaint as a  
9 whole, we don't see any additional facts as to BMCC.

10 In fact, there are four sections that  
11 plaintiffs have talked to you about today in the direct  
12 purchaser complaint that allege facts regarding  
13 defendants generally. There is the section in part 7 C  
14 of their complaint talking about international antitrust  
15 investigations, and that's the section where we walk  
16 through various allegations in jurisdictions worldwide  
17 and they point out specific companies and individuals  
18 that are alleged to be targets of the investigation.  
19 They don't name BMCC at all, and that's not surprising  
20 because BMCC is not a subject of the DOJ investigation,  
21 has not received a grand jury subpoena and does not  
22 appear at all in that section. So there are no  
23 additional facts as to BMCC in that part of the  
24 complaint.

25 Again, trying to read the complaint as a whole,

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1 one might look to the general section in part 7 D of  
2 direct purchasers' complaint. That section goes to  
3 collusive contracts, meetings and agreements generally.  
4 They again attempt to obfuscate what products are at  
5 issue by calling everything CRT products. This doesn't  
6 help as to BMCC. Not only has BMCC never manufactured  
7 finished products, but it doesn't have any subsidiaries  
8 that manufacture finished products. So to the extent  
9 that plaintiffs point to, you know, a parent company  
10 that manufactures the tubes and then controls a  
11 subsidiary that produces televisions or computer  
12 monitors, that's simply not the case for my client.

13 The next section of the complaint which  
14 plaintiffs have touted as the trade associations and  
15 events section, again that doesn't mention BMCC once.  
16 Not a single time.

17 Moving on to the specific defendant  
18 participation section, that's paragraph 173 again, here  
19 we have something a little bit unusual and unique to our  
20 client, and that is that in direct purchaser plaintiffs'  
21 opposition they've alleged that there is a typographical  
22 error in that paragraph and that 2001 should actually  
23 read 2007.

24 We didn't realize that that was the case and,  
25 of course, nor could we have because if you read the

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1 complaint as a whole, there is no clue as to whether  
2 BMCC participated in meetings in 2001, in 2007, in 2003  
3 or '4 or any other year; and the direct purchaser  
4 plaintiffs admit this when they say in their opposition  
5 that the complaint erroneously does not identify any  
6 conspiratorial conduct by BMCC after 2001.

7 While I'm on the topic of the typographical  
8 error, I'll just briefly address our statute of  
9 limitations argument. That is that on its face the  
10 claim should be dismissed under the statute of  
11 limitations unless the direct purchasers can show that  
12 the limitations period should be tolled.

13 THE COURT: That's based upon the allegation of  
14 2001, wasn't it?

15 MS. McMILLAN: That's right. That's based on  
16 the complaint as it reads now. Even if they were to  
17 amend their complaint to read 2007, the direct  
18 purchasers still failed to meet the fraudulent  
19 concealment standard and as to injuries related to sales  
20 more than four years prior to the filing of the first  
21 complaint, those claims should be dismissed.

22 I would like to also point that neither the  
23 direct purchasers nor the indirect purchasers have  
24 alleged a single act or statement of fraudulent  
25 concealment as to BMCC.

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1           So to recap, as to the direct purchaser  
2     complaint, there is one paragraph. It's vague,  
3     conclusory and certainly does not allege that BMCC  
4     joined a conspiracy or played some role in it that would  
5     be sufficient under the case law that we've heard argued  
6     today.

7           Turning to the indirect purchaser complaint, it  
8     suffers from many of the same flaws as that of the  
9     direct purchasers. As I mentioned, there are a total of  
10    three paragraphs mentioning BMCC in relation to meetings  
11    or allegations. The first one, paragraph 2, merely says  
12    that over time some defendants reached out to others,  
13    including BMCC. The indirect purchasers then assert  
14    that participants at some of the Chinese glass meetings  
15    included manufacturers in China such as BMCC, and  
16    finally in paragraph 184 that BMCC participated in  
17    meetings and discussions.

18           Again, recognizing the weakness of these  
19    paragraphs indirect purchasers direct us to the  
20    complaint as a whole. Reading the complaint as a whole  
21    doesn't add anything as to BMCC because, again, indirect  
22    purchasers have relied on the antitrust investigations  
23    which BMCC is not a target, the trade associations and  
24    relationships which BMCC is not alleged to have  
25    participated in.

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1           Neither set of plaintiffs ever alleged to have  
2 purchased CRT's coming from BMCC, and as I mentioned  
3 BMCC doesn't have any subsidiaries that make the  
4 finished products.

5           So for those reasons and the reasons in the  
6 joint motions to dismiss we respectfully submit that  
7 both complaints should be dismissed as to BMCC. I'd be  
8 happy to answer any further questions.

9           THE COURT: Thank you.

10          MR. RUSHING: Your Honor, Jeff Rushing again on  
11 behalf of the direct plaintiffs.

12          First, counsel is right when she referenced  
13 paragraph 173. That is the paragraph referring to BMCC.  
14 I didn't think she read it -- the paragraph she read --  
15 I don't think she read the right one. It does have a  
16 typo in it which I'll explain in a minute.

17          THE COURT: It does have a what, a typo in?

18          MR. RUSHING: The paragraph reads BMCC  
19 participated -- it should read (As read):

20               BMCC participated in at over 20 illegal  
21 bilateral group meetings between 1998 and 2001  
22 in which unlawful agreements as to inter alia  
23 price, output restrictions and customer and  
24 market allocation of CRT products, including  
25 CDT products and CPT products, occurred. These

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1 meetings occurred in China. BMCC never  
2 effectively withdrew from this conspiracy.  
3 None of BMCC's conspiratorial conduct was  
4 mandated by the Chinese government. BMCC was  
5 acting to further its independent private  
6 interests in participating.

7 The allegation is very much like referring to  
8 the other defendants, your Honor. It does has a typo.  
9 In the first line "at" should not be there. It should  
10 say "bilateral and group meetings" and it should say  
11 "between 1998 and 2007."

12 THE COURT: Have you made any attempt with the  
13 court to correct that typographical error?

14 MR. RUSHING: We discovered it in the briefs  
15 and we mentioned it to the briefs and mentioned to the  
16 court with the briefs.

17 THE COURT: Have you filed anything with the  
18 court seeking to correct it?

19 MR. RUSHING: We put a footnote in the brief  
20 asking for leave to amend it as necessary. As a  
21 practical matter, for purposes of this motion, your  
22 Honor, I don't believe it matters because if the --  
23 first of all, the fraudulent concealment allegations we  
24 have, which you've heard about already, if you accept  
25 our version of the allegations and the law as to those,



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1 then BMCC's motion should be denied.

2 As to the Twombly issue, again, it's a very  
3 similar allegation to the other defendants and the  
4 change I think is not material there. If it is  
5 material, we can change it.

6 And I will just say one thing further on the  
7 withdrawal argument. Again, it's based on a typo, as  
8 she said. But even so they asked the court essentially  
9 to infer from the fact that no attendance at meetings  
10 after 2001 is not alleged in the complaint, they ask the  
11 court to infer from that fact that they have withdrawn  
12 from the conspiracy.

13 As you've heard from Mr. Specks and others,  
14 withdrawal is an affirmative defense. It must appear as  
15 a matter of law on the face of the complaint; and,  
16 therefore, just the notion of drawing an inference in  
17 their favor on that is against the rules on motion to  
18 dismiss, and the simple fact that the complaint doesn't  
19 allege attendance at a meeting after 2001 I think in no  
20 way shows affirmatively that they disavowed the unlawful  
21 goal of the conspiracy, affirmatively acted to defeat  
22 the purpose of the conspiracy, or take definitive,  
23 decisive and positive steps to show its disassociation  
24 from the conspiracy. So, again, notwithstanding the  
25 typo, I think your Honor can deny the motion on that

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1 ground as well.

2 MR. SAVERI: I think the record should show  
3 that the indirect case has the right date, doesn't it?

4 MR. RUSHING: The indirect case does have the  
5 correct date. So there is no issue of notice.

6 THE COURT: Anything from the indirect  
7 plaintiffs?

8 MS. RUSSELL: Just very briefly I'll refer you  
9 to pages 43 and 44 of our opposition brief which  
10 discusses BMCC's participation in the conspiracy.  
11 Specifically paragraph 148 alleges that BMCC attended  
12 the class --

13 THE COURT: You're not referring to your  
14 complaint.

15 MS. RUSSELL: Right. Sorry. Paragraph 148 A  
16 specifically alleges that BMCC attended the Chinese  
17 glass meetings and it specifically alleges who they  
18 attended the Chinese glass meetings with, and finally I  
19 would note that none of the other Chinese  
20 co-conspirators with whom BMCC is alleged to have  
21 conspired with challenged the complaint under Twombly.  
22 Therefore, it's unclear to me why BMCC has done it.

23 Thank you, your Honor.

24 MS. McMILLAN: Ever so briefly, your Honor, if  
25 I may.

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1 THE COURT: Yeah, sure.

2 MS. McMILLAN: Ever so briefly, we've responded  
3 to most of those points in our briefs. I just wanted to  
4 say very quickly as to the typographical error, it is at  
5 the heart of the matter. It's not a harmless error.  
6 It's very much material. It changes the other  
7 defendants with whom BMCC could have been alleged to  
8 have attended meetings. It's not a ticky-tacky  
9 typographical change as the in at over would be. This  
10 is actually very much at the heart of the complaint and  
11 at the very least plaintiffs should be required to  
12 replead and allow BMCC the chance to reply in due  
13 course.

14 THE COURT: Okay. Thank you.

15 MR. SAVERI: In other words, as I understand  
16 it, you will not stipulate that we can change it without  
17 filing a motion; is that correct?

18 MS. McMILLAN: That's -- that's our position at  
19 this time.

20 MR. SAVERI: Okay. I just want to understand.  
21 So the answer is yes, you want us to amend.

22 THE COURT: Yeah, she's standing on her  
23 pleadings. All right. I believe the last one is which  
24 company?

25 MR. AHERN: Tatung Company of America, your

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1 Honor.

2 Well, I know your Honor has never heard this  
3 before, but we are different, and there are two  
4 important points about this. Our facts are different  
5 and the reason that we can talk about facts is because  
6 our procedural posture is different.

7 We brought a Rule 12(b)(1) motion under  
8 Illinois Brick and we attached sworn affidavits of two  
9 employees, Mr. Lai, L-a-i, and Mr. Chen.

10 THE COURT: Wait a minute. Go ahead. I'm  
11 sorry.

12 MR. AHERN: We have also brought a Rule  
13 12(b)(6) motion challenging the sufficiency of  
14 plaintiffs' allegations with respect to Tatung Company  
15 of America's, which I'll call TUS, TUS's participation  
16 in the alleged conspiracy.

17 In response, the plaintiffs did not seek to  
18 take the depositions of Mr. Lai and Mr. Chen in this  
19 case.

20 THE COURT: Who did you file the first motion  
21 on behalf of?

22 MR. AHERN: Tatung Company of America.

23 THE COURT: Same one. I thought you were  
24 talking about two companies here.

25 MR. AHERN: No. No. Tatung Company of America

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1 I refer to as TUS. And in response to our motion where  
2 we attach the sworn declarations of Mr. Lai and  
3 Mr. Chen --

4 THE COURT: Now, I understand you are out of  
5 the indirect case.

6 MR. AHERN: No, we're in both. Tatung Company  
7 of Taiwan is out of the indirect case. And I'll try to  
8 use the white board very briefly to show what the  
9 plaintiffs are trying to assert here. Okay?

10 THE COURT: I don't think you need to.

11 MR. AHERN: Oh, I think we do. So the  
12 plaintiffs did not seek to take the depositions of  
13 Mr. Lai and Mr. Chen. Okay? So the factual statements  
14 contained in those declarations are undisputed based on  
15 the record before your Honor. They do attempt to rely  
16 on depositions taken in the LCD case. I'll let them  
17 talk about that. Okay? But it will important, as  
18 demonstrated later, that many of the facts in the sworn  
19 declarations are basically at this point in the record  
20 before your Honor uncontroverted.

21 THE COURT: This is an affidavit of Mr. Lai.

22 MR. AHERN: And Mr. Chen. Mr. Lai is the  
23 financial person responsible, Mr. Chen is the  
24 operational person.

25 THE COURT: And they were filed in connection

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1 with this motion.

2 MR. AHERN: Correct. Now, with respect to your  
3 factual situation a few quick important facts. TUS does  
4 not manufacture CRT's and never has. TUS buys CRT's  
5 from companies including Chunghwa and others. Not  
6 exclusively Chunghwa. TUS is not owned in any way by  
7 Chunghwa. In fact, TUS is a purchaser in this case and,  
8 in our view, is a victim in this case; and we have  
9 submitted a declaration in connection with our reply,  
10 Mr. Lie's reply declaration, which indicates that we  
11 will participate in the class if there is a class.

12 Now, very briefly, the plaintiffs have utterly  
13 failed to allege that TUS participated in the alleged  
14 conspiracy, didn't attend any meetings, no  
15 communications with any competitors. Okay?

16 One of previous defense counsel referred to the  
17 portion of the California Title Insurance litigation  
18 decision which was in May of 2009 in which Judge White  
19 specifically rejected general allegations as to families  
20 of companies.

21 So without any allegations with respect to  
22 specific TUS participation in the alleged conspiracy,  
23 with the family allegation out, then what is it that the  
24 plaintiffs can rely on here?

25 Well, I was very happy that Mr. Simon's chart

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1 of the seven of the 12 groups of the defendants that are  
2 integrated didn't have us on it or Chunghwa. Thanks,  
3 Bruce. Appreciate that. Maybe the reason is that  
4 Chunghwa doesn't control TUS. Maybe the reason is that  
5 Chunghwa has settled and TUS has no independent  
6 liability.

7 THE COURT: What was the relationship between?  
8 Buyer? Seller? Was there a corporate relationship?

9 MR. AHERN: May I approach the white board?

10 THE COURT: You can't just tell me.

11 MR. SIMON: We have to go through the family  
12 history of the owners.

13 MR. AHERN: Your Honor, the details usually  
14 benefit the defendants. But in any event we have  
15 Chunghwa and we have Tatung Taiwan and then we have  
16 Tatung US -- that sometimes known as CPT -- is the only  
17 manufacturer of CRT's. Okay? Tatung Taiwan owns  
18 30 percent of Chunghwa. Tatung Taiwan owns 50 percent  
19 of TUS.

20 THE COURT: So it was the parent corporation,  
21 at least the upstream, an upstream stockholder.

22 MR. AHERN: That's right. But there's no  
23 ownership here, and as far as we have said, based on the  
24 facts in the Chen and Lai declarations, there is also no  
25 financial control, no operational control and no control

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1 overpricing, maybe most importantly. Okay?

2 And the same thing here. No financial control,  
3 no operational control, no control over pricing. All  
4 right?

5 Now, the plaintiffs make a big deal about the  
6 fact that Tatung Taiwan --

7 THE COURT: Did Tatung U.S.A. buy CRT's.

8 MR. AHERN: It does buy CRT from Chunghwa. The  
9 declaration say these are arm's length transactions.

10 THE COURT: And it's a sister company.

11 MR. AHERN: It's a sister company, but arm's  
12 length transactions. But the mere fact that it's a  
13 sister company doesn't mean anything with respect to the  
14 control exception to Illinois Brick. This is what we're  
15 talking about, the control exception to Illinois Brick,  
16 and we're also talking about a possible application of a  
17 single enterprise theory. But none of that would apply  
18 here because Chunghwa has no ownership in Tatung U.S.  
19 and has no control over Tatung U.S.

20 Now, the only control that really the  
21 plaintiffs try to argue is that the same family that  
22 started Tatung Taiwan, the Lin family, also controls  
23 Tatung U.S., owns the remaining 50 percent of Tatung  
24 U.S.

25 Well, that has been dispersed, but the more



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1 important issue here is the Lin family doesn't control  
2 Tatung Taiwan. So Tatung Taiwan is a public company on  
3 the Taipei stock exchange. The Lin family owns  
4 4.2 percent of it, and there are significant larger  
5 purchasers, but it's a public company. So this is the  
6 death knell for their argument reliance on the Lin  
7 family. Lin family doesn't control Tatung Taiwan. So  
8 it doesn't make any difference whether or not some  
9 members of the Lin family own the additional 50 percent.

10 Let me just while I'm here talk about Royal  
11 Printing. Okay?

12 THE COURT: Talk about what?

13 MR. AHERN: Royal Printing, the Ninth Circuit  
14 case. Royal Printing is, pure and simple, a control  
15 exception case. All right? And the Ninth Circuit in  
16 Delaware Valley said so and the plaintiffs have tried to  
17 expand Royal Printing beyond being a pure control  
18 exception case.

19 Now, remember the reason for the control  
20 exception is that when you have the manufacturer coming  
21 down to the subsidiary, coming down to the purchaser  
22 that the court in Illinois Brick said what we're not  
23 going to do is we're not going to explore pricing at  
24 both the manufacturer level, pricing decisions at both  
25 the manufacturer level and at the subsidiary level. If

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1 you control the subsidiary, we're going to assume that  
2 you're controlling the pricing, Mr. Manufacturer. Okay?

3 In this particular case, we have no suggestion  
4 of any control over pricing. So if -- so what happens  
5 if you leave us in in this case? Who are the plaintiffs  
6 going to be able to recover from? Well, they're going  
7 to be able to recover from Chunghwa. They already  
8 settled in the direct purchasers' case. They're going  
9 to be able to theoretically recover from us. That looks  
10 a little bit like duplicative recovery to me.

11 Well, what if it's not duplicative recovery?  
12 If it's not duplicative recovery, then it's pass-on.  
13 Either one of them, the Supreme Court says, you can't  
14 have.

15 That was good because I just went through about  
16 20 pages here.

17 The plaintiffs do attempt to rely on some  
18 statements that are -- some marketing statements that  
19 have been uncovered in the LCD case which they say that  
20 show that we're all big one single enterprise and also  
21 say that show control. Okay? Referring to the Tatung  
22 group and including Chunghwa in that.

23 We cited numerous cases which have said that  
24 those types of statements are, number one, commonplace  
25 in business and are not to be taken as trumping the

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1 objective facts of whether there's operational control  
2 or financial control, and those cases are cited in our  
3 brief.

4           With respect to the issue of once again going  
5 back to Royal Printing, Mr. Simon said with respect to  
6 Sugar that, well, you can't -- one of the things that  
7 the court cited in the Third Circuit was that there  
8 would be a gaping hole in enforcement, but Illinois  
9 Brick, the Supreme Court said that they are adopting a  
10 bright line test and if that meant that certain people  
11 who were injured went without redress that that was okay  
12 with the Supreme Court.

13           So the idea that there is some sort of likely  
14 not to sue standard that is now under Royal Printing I  
15 think should be rejected based on a proper reading of  
16 Illinois Brick, and Judge Hamilton in the Sun  
17 Microsystems decision also said that where a company  
18 like Tatung U.S.A. retains its right and even indicates  
19 that it's going to exercise its right to pursue a claim,  
20 that that is sufficient under Illinois Brick to defeat  
21 essentially a control exception argument.

22           So I would recommend to your Honor Judge  
23 Hamilton's decision in Sun Microsystems case at page --  
24 which is cited at page 12 of our reply brief.

25           With respect to the standard that this court

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1 should apply, there was some reference to -- earlier on  
2 this morning there was some reference to the fact that  
3 if the -- if the issues are intertwined between Illinois  
4 Brick and the merits that the practice standard is Rule  
5 56 standard. That is actually -- that argument is  
6 actually incorrect. Once again Judge Hamilton in the  
7 Sun Microsystems decision at page 15 of our reply brief  
8 goes through this and says that in fact where you have a  
9 factual attack on a complaint under 12(b)(1), the proper  
10 stand -- and where the issue is not intertwined, and in  
11 that case she found that the FTAIA issue was not  
12 intertwined with the merits, that you apply the 12(b)(1)  
13 standard, and the 12(b)(1) standard allows your Honor to  
14 make factual determinations.

15 Now, with respect to the situation here, the  
16 issue of whether TUS is a purchaser as opposed to being  
17 controlled by Chunghwa is not intertwined with the  
18 merits. There is nothing that the plaintiffs need to  
19 prove with respect to their Sherman Act Section 1 claim  
20 that they would need to prove in order to establish that  
21 Chunghwa controls TUS.

22 Plaintiffs invoke Copper Weld. I'll just refer  
23 your Honor once again to Judge Hamilton's decision where  
24 she rejects at 608 Fed. Supp. 2d -- it's at 1185-1186  
25 where she rejected a similar argument that Copper Weld

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1 provides any basis for the plaintiffs here to pursue  
2 either a control exception or a single enterprise theory  
3 here.

4 Finally, as mentioned with respect to LG  
5 Electronics, as also mentioned by Mr. Simon with respect  
6 to Sony and others, TUS here is a purchaser, we're a  
7 victim, we're not a target, we didn't get a grand jury  
8 subpoena, and according to the plaintiffs, we operate in  
9 a competitive market. So as such, we should be  
10 dismissed.

11 MR. FASTIFF: Eric Fastiff from Lieff,  
12 Cabraser, Heimann & Bernstein on behalf of the direct  
13 purchaser plaintiffs.

14 Just a few quick ones, your Honor. First of  
15 all, this really is an improper 12(b)(1) motion. It's a  
16 12(b)(6) motion. The claim here is a Sherman Act claim.  
17 That, of course, is a federal original jurisdiction  
18 claim. So you should look at this under this under  
19 12(b)(6) standard. All inferences should be directed in  
20 favor of the plaintiffs. If your Honor looks at it as a  
21 12(b)(1) motion, taking into account the evidence that  
22 Mr. Ahern referenced, that evidence is entitled to  
23 little weight. The declarations have no time, they are  
24 qualifications as to when various actions were supposed  
25 to have taken place. Often statements talk about things

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1 currently. We're not talking about what happened  
2 currently. We're talking about what happened in the  
3 past. So that evidentiary weight is very little. It's  
4 also rebutted by the Saveri declaration, Exhibit 6,  
5 which incorporates the evidence supplied in the LCD  
6 case.

7 And what's crucial is that what Mr. Ahern  
8 didn't tell you and what he did not cite in his opening  
9 brief is 100 percent of his arguments were rejected by  
10 Judge Illston in the LCD case in a two-page opinion. He  
11 never cited it. We did. It's 2009 WestLaw 533130.

12 THE COURT: Wait a minute. 2009 WestLaw what?

13 MR. FASTIFF: 533130. It's a two-page  
14 decision. It decides 100 percent of the exact same  
15 issues on the exact same evidentiary record. So I'm not  
16 going to go through and rebut everything he said because  
17 I commend the decision to you.

18 I will respond just two quick points. About  
19 the control of Tatung Taiwan over Tatung U.S., Mr. Ahern  
20 didn't tell you that the chairman of Tatung Taiwan is  
21 also the chair of the board of Tatung U.S. His sister  
22 and his nephew are also on that board, as is one of his  
23 employees and a former employee. Clearly the chair of  
24 the subsidiary is not going to sue the parent, and his  
25 family members are going to go along with that decision.

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1           Finally, I just want to point out the Ninth  
2   Circuit authority here is clear. Because Tatung U.S. is  
3   not going to sue Tatung Taiwan, the Ninth Circuit says  
4   in Freeman, the Freeman case, 322 F. 3d. 1133, that an  
5   indirect purchaser may sue the direct purchaser if it's  
6   not going to sue its supplier, and it then cites Royal  
7   Printing; and Royal Printing holds where a subsidiary is  
8   controlled by a parent, and here it is considered as  
9   one, then Chunghwa and Tatung U.S. are corporate  
10   affiliates and Royal Printing says Illinois Brick does  
11   not apply to this affiliate situation and that's what  
12   Judge Illston found in the LCD case. Two pages. A  
13   hundred percent of the same arguments, a hundred percent  
14   of the same arguments. The ruling should be 100 percent  
15   the same. Thank you.

16           THE COURT: Anything from indirect?

17           MS. RUSSELL: Just two seconds, your Honor.  
18   Again, just to clarify, the Rule 12(b)(1) motion is not  
19   directed at the indirect purchaser plaintiffs. As to  
20   the Rule 12(b)(6) motion by Tatung U.S., again I'll  
21   refer you to our brief which I feel is sufficient on  
22   this issue. Pages 42 and 43 of our brief describes  
23   Tatung's participation in the conspiracy, and we'll  
24   refer you -- in the brief it refers you to the specific  
25   paragraphs in our complaint.

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1 Thank you, your Honor.

2 MR. AHERN: Your Honor, following up that last  
3 point, the allegations with respect to our participation  
4 is that we sold CRT finished products. That's it. So  
5 we're in the same position as the plaintiffs here. That  
6 obviously can't be enough.

7 With respect to this not being a proper  
8 12(b)(1) as relates to the direct purchaser complaint  
9 raising Illinois Brick, well, we cited In re Ditropan,  
10 which is 2007 Lexus 78423, in support of that, and that  
11 holds that an Illinois Brick is properly -- Illinois  
12 Brick argument is properly brought on a 12(b)(1).

13 With respect to Judge Illston's decision, she  
14 made basically no attempt to address the case law that  
15 we cited to her with respect to the limited effect of  
16 the marketing materials and she based basically her  
17 entire decision on that. So I would encourage your  
18 Honor to delve into the cases which say that with  
19 respect to those marketing materials, they do not trump  
20 whatever evidence there is, and there is none here, with  
21 respect to operational control and financial control.  
22 Thank you.

23 THE COURT: All right. Gentlemen and ladies,  
24 excellent job. Handled a lot of material and a very  
25 lucid fashion and understandable fashion. I'm taking it



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1 under submission. As you know, my so-called decision is  
2 going to be in the form of a recommendation to -- a  
3 report and recommendation to Judge Conti.

4 Now, how long it's going to take me to do this  
5 I don't know. I'm sure you can appreciate that I've got  
6 a lot of stuff to sift through and organize here.

7 What's going on in the cases? As I recall, the  
8 stay is still in effect until sometime in January.

9 MR. KESSLER: We actually have a stipulation.

10 MR. SAVERI: The stipulation is simple. It  
11 says that nothing will happen until you rule, period;  
12 isn't that right?

13 MR. KESSLER: Till Judge Conti rules on your  
14 recommendation. It's till the decision by the court on  
15 the motion to dismiss. So we're all stayed right now by  
16 stipulation.

17 THE COURT: What about the stay with the  
18 government?

19 MR. KESSLER: The DOJ stay has its own life,  
20 but we have an independent stay that sort of supersedes  
21 that. So the DOJ stay partially expires in January, but  
22 our stay is with all the parties in terms of discovery  
23 would apply until the court rules.

24 MR. SAVERI: We can write what the stipulation  
25 is, but as of now there is a stay until you rule and

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1 then there is a cutoff date in January, but I think that  
2 would be continued depending subject to your ruling.

3 THE COURT: What's going on with me then? Are  
4 you doing anything?

5 MR. KESSLER: No.

6 THE COURT: Right now you're going to wait for  
7 me to recommend and Conti to decide.

8 MR. KESSLER: Correct.

9 THE COURT: Get to it as quickly as I can.

10 (Whereupon the hearing adjourned at 6:35 p.m.)

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CERTIFICATE OF CERTIFIED SHORTHAND REPORTER

I, WENDY E. ARLEN, hereby certify that I am a  
Certified Shorthand Reporter; that I reported in  
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place therein stated; that the foregoing pages are a  
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Dated: \_\_\_\_\_

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